88-2116

Supreme Court, U.S.
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No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1988

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

PETITIONER,

V

RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
THE ESTATE OF CARL A. JOHNSON, SR.,
Jointly And Severally, Defendants-Appellees,
and
The Law Firm Partnerships Of
LANDMAN LATIMER CLINK & ROBB, And
CULVER LAGUE & McNALLY,

RESPONDENTS.

On Writ of Certiorari to the
MICHIGAN COURT OF APPEALS

EMERGENCY
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a 3 years "Relief From Judgment" action within and independent of a 13-years-pending nonstop civil action concerning a monumental liberty and property interest; whether the State violated the U.S. Constitution by failing to provide a member of a class of alleged crime victims a Due Process-Equal Protection-Just Compensation-Parental Rights-REQUIRED full evidentiary hearing on the merits for determining if the alleged UNQUALIFIED-LAW BREAKING OPPOSING COUNSEL procured an unfair trial, erroneous dismissal, denial of leave for either a timely or delayed appeal of right, and denial of a first-scheduled evidentiary hearing by 12 FRAUDS UPON THE COURTS sworn to at the onset?

The Michigan Court of Appeals and Supreme Court answered "No".
Petitioner claims they should have answered "Yes".

2. where the alleged prejudicial trial court replacement judge ordered the alleged crime victim to remove his necessary preponderence of trial evidence from the 13 years old pending action's record at the onset of said 3 years "Relief From Judgment" action; whether the state violated similar Constitution rights by failing to allow said trial evidence back into the record during an appeal of right and before affirmation of dismissal with prejudice of both the 3 and 13 years old actions on ground of Summary Disposition, no genuine issue of material fact?

The Michigan Court of Appeals and Supreme Court answered "No".
Petitioner claims they should have answered "Yes".

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AN EMERGENCY PETITION FOR CERTIORARI

To the Honorable Chief Justice and associate justices of the Supreme Court of the United States. (The Chief Justice may wish to disqualify himself because the matter involves his late brother-in-law.)

Donald Edgar Johnson, Petitioner in pro per with effective assistance of counsel, prays that a writ of certiorari issue to review the Muskegon County Circuit Court 1974-1986 judgments plus the Michigan Court of Appeals 1975-1988 judgments which led to the Michigan Court of Appeals judgments entered on March 3, 1988[17a] and May 6, 1988, in Johnson v. Johnson, which the Michigan Supreme Court declined to review on March 29, 1989 and which finally denied any compensation for a person's "total" private properties taken for private and public use under false pretenses.

OPINIONS BELOW

The Michigan Court of Appeals has issued an opinion in these 1973 and 1986 consolidated cases regarding the consolidated 1983 and 1986 Relief From Judgment "no evidence allowed" actions, a copy of which appears in the Appendix to this Petition, at pages 17a-19a. The opinion has not yet been reported. A copy of the judgment of the Michigan Supreme Court appears in the Appendix to this Petition, at page 20a.

JURISDICTION

The judgments of the Michigan Supreme Court were entered on 2/2/89, 3/29/89, and 4/14/89. The jurisdiction of this Court is invoked under 28 USC § 1257(3). Also, 28 U.S.C. § 2102 (c)(f).

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

"All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Const. Amend. 14.

"Congress shall make no law . . . respecting the right of the people . . . to petition the Government for a redress of grievances." Const. Amend. 1.

"Michigan GCR 806. Appeals by Right and by Leave. . . .2 Appeal by Leave . . . If an application (under either subrule 806.4(1) or (2)) in a civil case is filed more than 18 months after entry of the order or judgment appealed from, leave to appeal MAY not be granted." GCR, 1963, 806.2(5). (Emphasis added).

"Relief from Judgment or Order . . .1 Clerical Mistakes . . . .2 Defendant Not Personally Notified. . . .3 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. .

or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment order or proceeding was entered or taken. . . This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment . . . or to set aside a judgment for fraud upon the court. . . and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." GCR 1963, 528.3. (Emphasis added).

"Appeals to the Court of Appeals are heard on the original record." MCR 7.210(A). (Emphasis added).

"SUMMARY DISPOSITION . . . (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: . . (8) The opposing party has failed to state a claim on which relief can be granted. . . (10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(8)(10).

"Michigan GCR 1963, 806. Appeals by Right and by Leave. . . .4 Delayed Appeal. . . . (2) Where timely appeal would have been of right, application for delayed appeal need not be accompanied by settled statement of facts but shall affirmatively show, by statement of facts and brief, that there is merit in the claim of appeal and, by affidavit of facts, that the delay was not due to appellant's culpable negligence. The application shall be

noticed for hearing as motion. Any other party may file opposing statement, brief and affadavits. . . ." GCR 1963, 806.4(2).

"GCR 816.5 Vexatious Proceedings; Consequences. (1) The court may, upon its own motion, or the motion of any party, dismiss an appeal, assess punitive damages or take other disciplinary action where it has been determined that an appeal or any of the proceedings therein was vexatious by reason: (a) That an appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or (b) That any pleading, motion, argument, petition, brief, document or record filed in the cause or any testimony presented in the cause was grossly lacking in the requirements of propriety or grossly disregarded the requirements of a fair presentation of the issues to the court.

(2) Punitive damages as herein provided shall not exceed an amount equivalent to actual damages and expenses incurred by the opposing party, including reasonable attorney's fees, and an added amount not exceeding 10 per cent of any judgment for money damages awarded in the lower court or tribunal." GCR 1963, 816.5.

"RULE 2.612 RELIEF FROM JUDGMENT OR ORDER . . . (C) Grounds for Relief From Judgment. . . . (3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment . . . or to set aside a judgment for fraud on the court." MCR 2.612(C)(3).

"RULE 7.206 EXTRAORDINARY WRITS, ORIGINAL ACTIONS, AND ENFORCEMENT ACTIONS . . . (B) Superintending Control . . . To the extent that they do not conflict with this rule, the rules in subchapter 3.300 apply to actions for superintending control . . ." MCR 7.206(B). (There is no "MCR 7.206(B)(3)" like 2/4/76 order.)

"EXTRAORDINARY WRITS RULE 3.301 . . . (A) Applicability and Scope Rules. (1) A civil action or appropriate motion in a pending action may be brought to obtain (a) superintending control . . . Unless a particular rule or statute specifically provides other wise, an original action may not be commenced in the Supreme Court or the Court of Appeals if the circuit court would have jurisdiction of an action seeking that relief. " MCR 3.301(A)(1)(a).

"No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." Mich. 1963 Const. Art I § 17.

"The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amend. 1, 5." Matter of N.C. Trading, Cust. & Pat. App. 1978, 586 F2d 221.

"A fraud is perpetrated on the court where some material fact is concealed from the court or some material misrepresentation is made to the court; where such a fraud is alleged, the court must conduct an evidentiary hearing to determine whether such fraud exists." Valentino v. Oakland Sheriff, 134 Mich App 197, 351 NW2d 271, 422 Mich 858 (1984).

"That the wrongdoer gets the property in two steps rather than one where a partnership with his victim is formed should not absolve him of the crime of obtaining money or property by false pretenses where the false pretenses continued to operate up to the moment of his wrongful appropriation of the partnership assets contributed by his victim." People v. Jones, 224 P2d 353,357. (1950).

"The due process clauses of the United States and Michigan Constitutions apply where government action deprives a person of a liberty or property interest. U.S. Const. Amend. XIV; Const.1963, Art 1, § 17." Nolan v. Dept. of Licensing & Regulation, 151 Mich App 641, 391 NW2d 424 (1986).

"Due process requires that an opportunity to be heard be afforded where the state seeks to deprive a party of a property right, such an opportunity to be heard must be at a meaningful time and in a meaningful manner. U.S. Const. Amend. XIV; Const. 1963, Art I, § 17." Blue Cross & Blue Shield of Michigan v. Commissioner of Insurance, 155 Mich App 723, 400 NW2d 638 (1986).

"The limitation of one year does not apply where 'fraud upon the court' is involved." McDaniel v. Jackson, 78 Mich App 218, 223n6 (1977).

"When the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the record on appeal in the case pending on appeal." MCR 7.210(H).

"A grant of summary judgment is premature if made before discovery on a disputed issue is complete." Reguales v. Community Hosp., 140 Mich App 455, 364 NW2d 723 (1985).

"When reviewing grant of summary judgment for failure to state claim upon which relief can be granted, Court of Appeals assumes factual allegations of complaint are true and determines whether claim, on the pleadings, is so clearly unenforceable as matter of law that no factual development can possibly justify right of recovery." Fillare v. Union Oil Co. of California, 372 NW2d 606, 143 Mich App 520, consideration denied 372 NW2d 515, 422 Mich 1238 (1985).

"In passing upon a motion for summary judgment based on alleged lack of material issues of fact, Court of Appeals must consider the pleadings, affidavits, depositions, admissions and other documentary EVIDENCE then available to it." Grayson v. Chambersburg Engineering Co., 362 NW2d 751, 139 Mich App 456 (1984).

"Liberal construction is to be accorded a pro se complaint." Sigafus v. Brown, C.A.Ill., 416 F2d 105 (1969).

STATEMENT

A F F I D A V I T

State of Michigan }
County of Muskegon } SS

DONALD EDGAR JOHNSON, being first duly sworn, says: That he is Petitioner herein, Plaintiff-Appellant in these 1973 and 1986 consolidated civil actions, and a member of a class of alleged white collar crime victims, whose total 1922-1973 private properties[1] plus 2 minor children were taken for private and public use without any compensation because of family fiduciary 3 defendants and their federal tax-evading conflicting interests counsels' FRAUDS UPON THE COURTS, inter alia -- in a State which violated the Constitution!

In 1964-65, plaintiff and the 3 defendants pooled their money and jointly purchased a huge appreciating nightclub while retaining defendants' law firm

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1/ Except musical/recording tools.

partnerships herein to transfer plaintiff's Indiana phono records substantial corporate assets to plaintiff and defendants' new Michigan same-name corporation. In 1967, defendants caused the loss of plaintiff's high-value Kandy Tapes & Records Corp. (Indiana) to plaintiff and defendants' law firm partnerships which took Kandy Tapes & Records Corp. (Where?) for themselves while establishiong a no-value Kandy Tapes And Records Corp. (Mich.) for plaintiff and defendants. And in 1970-72, defendants and their counsel herein wrongfully appropriated all remaining joint venture assets contributed by plaintiff, including 5½ years-100 hours weekly nigh-value labor, by undue influence-FRAUDS UPON THE COURTS that defendants were 3 years Money Lenders rather than 3-15 years Joint Venturers-who had solicited stock in a corporation to be formed. And defendants mitigated damages by sending plaintiff

and his 2 minor children to San Diego public welfare which kidnapped the children without a hearing and sent them to their Ohio mother who had deserted them 10 years earlier.

In 1973, plaintiff sued his father and 2 younger brothers, the 3 defendants, who retained said counsel herein. Evidence was presented that plaintiff and defendants were on a 1964-1979 family fiduciary nightclub-phono records Joint Venture to form a corporation and that said counsel were conflicting interests (Buyers-Sellers) federal tax-evading wrongdoers.[2]

In 1974-83, trial court denied a jury though plaintiff paid the $30 fee; declined to rule whether defendants' counsel were federal tax evaders; ruled defendants' counsel were not unqualified; provided

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2/ Chief Justice Rehnquist's late brother-in-law executed the federal tax evasion in behalf of defendants' counsel.

an unfair trial and erroneous 12/9/74 dismissal judgment; ruled that defendants were Money Givers, not Money Lenders or Joint Venturers;[3] failed to reschedule a hearing to settle facts when defendants failed to show for the 12/30/74 scheduled hearing; stipulated that plaintiff's entertainment wages were pre-1964 worth $430 per 30 hour week; stipulated that plaintiff's mobile home/office was worth $10,000 in 1970; ruled that plaintiff was not a bona fide indigent; delayed filing a statement of nonsettled facts in the Court of Appeals until 1979; refused to disqualify the trial judge as prejudicial to undue influence; and prohibited the plaintiff from filing more papers pending a Court of Appeals decision whether to

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3. The trial judge opined that the 3 defendants who contributed but $22,658 to plaintiff's hundreds of thousands of dollars worth of services, were Money Givers rather than Joint Venturers -proved by the EVIDENCE.

grant leave for an 8-years-delayed[4] appeal of right.

In 1983, plaintiff, assisted by effective counsel, filed a timely motion in county trial court for a partial new trial on ground that defendants and their counsel procured and 8½ years prolonged the 1974 dismissal judgment by 12 specific sworn-to FRAUDS UPON THE COURTS.[5] Though due process required a full evidentiary hearing on the merits to determine if the frauds upon the courts existed, defendants' counsel filed frauds upon the courts (a) that "the full appellate process has been

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4/ 8 years delayed while plaintiff bootstrapped himself off public workfare and piecemeal filed the 1976-required full $5,000 transcript as defendants counsel was perpetuating their fraud upon the courts that plaintiff was not a bona fide indigent deserving of a hearing to settle facts or a waiver/suspension of transcript cost.

5/ The 12 Frauds Upon The Courts plus the detailed references to the original 1974 trial/post-trial EVIDENCE were 5/89 filed in related Mich. Court of Appeals #108452.

exhausted", and (b) that "Mich. GCR 528 . . . requires presentation not more than one year after the judgment was entered" And trial judge replacement #1 rescinded his scheduled evidentiary hearing. And trial judge replacement #2 re-denied the evidentiary hearing, ordered plaintiff to remove his preponderence of evidence plus defendants' 1 exhibit from the original '73 action's record, denied the Motion, and prohibited plaintiff from filing any papers not dealing with appeal to higher courts.

In 1984, the "~~prejudicial-to-the-rich/influential~~" state appellate courts affirmed trial court's denial of said due process motion for the erroneous reason "that more than one year having elapsed from the date of judgment, plaintiff is required to file an independent action,

GCR 1963, 528.3."[6]

In 1985, this U.S. Supreme Court #85-357 did not grant certiorari in the interlocutory matter, but did urge the Michigan Court of Appeals to allow plaintiff to at least file the required independent action.

In 1986 after delaying the required independent action's filing for 2 years as a defendant died, trial court re-denied an evidentiary hearing, granted defendants' motion for summary judgment (failure to state a claim upon which relief can be granted), consolidated the original '73 and independent '86 actions, and dismissed both actions with full prejudice. And plaintiff filed his claim of appeal of right of the 6/20/86 trial court opinion-

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6/ GCR 528.3 did not require an independent action rather than a motion regarding frauds upon the courts. See U.S. Supreme Court #85-357, Petition p 27.

dismissal judgment of the 2 actions in Michigan Court of Appeals #92822. Trial court's reasons for denying an evidentiary hearing during the 3 years Relief From Judgment action was (a) that the trial judge replacement #2 believed that an evidentiary hearing of the 12 frauds upon the courts had already been provided a 1974 trial and a 12/9/74-6/9/76 delayed appeal of right, and (b) that the 12/9/74 dismissal judgment had not been prolonged. And plaintiff countered that the unfair trial-erroneous 1974 dismissal did not provide a hearing for the specific 12 frauds upon the courts nor was any delayed appeal ever provided because defendants' counsel prevented plaintiff's having a hearing to settle facts or a suspension/waiver of the $5,000 transcript cost for a timely or delayed-within-18-months appeal of right by their fraud #11 upon the courts that plaintiff was not a

bona fide indigent[7] -- which did 8½ years prolong the 1974 dismissal judgment until the 5/3/83 start of the Relief From Judgment action.

In 1987 during appeal of the 1983-1986 Relief From Judgment action, the Michigan Court of Appeals Chief Judge, Robert J. Danhof, intervened and refused to disqualify himself though he had 1970 represented the federal credit union that had refinanced all parties' joint venture,

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7/ On 9/4/75, plaintiff filed proof of his being single, broke, living alone, and constantly seeking meaningful employment to qualify for Muskegon public workfare #K6133244A and raise $5,000 transcript cost. Defendants' counsel received a copy as did trial court; but the Court of Appeals #22496 motion mysteriously disappeared from that court's files per 10/7/81 affidavit/motion. Also see Fraud Upon The Court #11, related Court of Appeals #108452 re 5/9/89 Supplement p 3-7. Also note that plaintiff's Soc. Sec. #382 14 7430 is erroneously printed 384 14 7430 on f 10/3/74 p 12 in the County where a "Bernie" had been receiving public welfare by using plaintiff's Soc. Sec. number before plaintiff applied for assistance after 1970 for the first time.

then lost thousands of dollars when defendants and their counsel took over the Venture's total assets and refused to pay one penney to the federal creditor. And the Court of Appeals, including Judge Danhof, denied due process of an appeal on the original-with-evidence records of the 2 actions that were consolidated, and affirmed trial court's denial of a due process evidentiary hearing, summary disposition,[8] and dismissal of both the '73 and '83 actions with full prejudice. And the opinion-judgment erroneously stated that plaintiff had failed to cite any authority in support of his motions for an order directing the trial court to deliver the 1974 trial exhibits to the Court of Appeals.

8/ Trial court's summary disposition was ground of "failure to state a claim upon which relief may be granted"; but Court of Appeals affirmed summary disposition on a different ground: "no genuine issue of fact".

Finally, in 1989, the Michigan Supreme Court declined to review the matter and issued orders that omitted (a) "Jointly And Severally" under defendants-appellees, and (b) the lower court "LC" number 73-C7432 of the '73 original action in which there are over $2,000,000 damages at stake herein.

In summary, defendants, their counsel herein, and the State of Michigan (including unqualified Court of Appeals Chief Judge Danhof) took plaintiff's "total" private properties and liberties worth over $1,000,000 plus about $50,000 "federal" money for private and public use under undue influence and specific frauds upon the courts, inter alia, in violation of the U.S. Constitution and laws. And plaintiff has had partial evidentiary hearings, but the original record-with-complete EVIDENCE was never permitted a review by any other judge

than the county trial judge and his replacement #2 who ordered all evidence removed before the record was allowed to be reviewed above. There never was a valid second opinion by a valid higher court. And plaintiff 5/89 filed exact references to the removed evidence proving the frauds did exist. And he can deliver that removed evidence at once.

Further, affiant sayeth not.

Donald Edgar Johnson

Subscribed and sworn to before me on June 19, 1989.

KATHERINE WANSLEY
Notary Public, Muskegon County, Michigan
My Commission Expires May 21, 1991

Katherine Wansley
Notary Public, Muskegon County, Michigan.
My Commission expires _____.

CONCLUSION

Petitioner prays that the judgment of the Court below be reversed, the cause be remanded, and the Court below directed to provide an evidentiary hearing and/or a partial new trial.

WHEN AND HOW QUESTIONS WERE RAISED AND ADJUDICATED IN STATE COURTS

Federal questions were raised at the very onset and throughout the 1983-1986 trial court Relief From Judgment action.

When State courts denied due process of a motion on ground that it had to be in the form of an independent action, and when they then blocked the filing of the required independent action in 1984, Petitioner 8/29/85 petitioned this Court #85-357 for interlocutory decisions that resulted in a letter from this Court to the Michigan Court of Appeals that paved the way for the 2 years-delayed 2/10/86 filing of the independent action portion of the 3 years long Relief From Judgment action in trial court.

The detailed when and how is shown in the appendix herein.[21a]

REASONS FOR GRANTING THE WRIT

One reason is to prevent a State's authorizing a federal tax-evading special interest group from taking a person's substantial private property and liberties for private and public use without just compensation by denial of due process of a timely meaningful Relief From Judgment action alleging the procuring and prolonging-for-years of a dismissal judgment by sworn-to frauds upon the courts. Another is to insure that a State doesn't hear an appeal of a Relief From Judgment action, frauds upon the courts, on less than the complete original-with-evidence record of both the Original and the Relief From Judgment actions before affirming their dismissal with prejudice.

As to the 2 questions presented:

1. In a 3 years "Relief From Judgment" action within and independent of a 13-years-pending nonstop civil action concerning a monumental liberty and property interest, the State violated the U.S. Constitution by failing to provide a member of a class of alleged crime victims a due process-equal protection-just compensation-parental rights-required full evidentiary hearing on the merits for determining if the alleged unqualified-law breaking-opposing counsel procured an unfair trial, erroneous dismissal, denial of leave for either a timely or delayed appeal of right, and denial of a first-scheduled evidentiary hearing by 12 frauds upon the courts sworn to at the onset.

Plaintiff is a member of a class of alleged white collar crime victims because his substantial private properties and liberties were taken for private and public use under false pretenses that he took full

custody of defendants' money, solely purchased a too-large-appreciating unfinished nightclub, provided defendants with a valid $20,600 promissory note-mortgage on the nightclub, gave away his phono records-copyrighted music worldwide longtime assets, was not solicited to purchase stock with his services in a corporation to be formed, mismanaged a theatre-type nightclub, had a different address and social security number, and lost everything except his tools by his own dumb decisions.

In Michigan, it is a felony to take substantial private property/money under false pretenses; but the State elected to join the rich influential defendants and their counsels' taking plaintiff's "total" private properties, including high value entertainment/management services, for private and public use with no compensation by frauds upon the courts

and the federal Internal Revenue Service -- in violation of Constitution Amendments 1, 5, and 14 plus precedents.

The trial court original '73 action is still pending along with its "no evidence allowed" '83 Relief From Judgment 5/2/83-6/20/86 action herein. The 12/9/74 dismissal judgment was 8½ years old at the 5/2/83-6/9/83 start of the Relief From Judgment action. The 2 consolidated '73 and '83 actions were 13 years old when trial court dismissed them on 6/20/86.

The 3 years Relief From Judgment action was within the '73 original action 5/2/83-2/10/86 by way of the Motion for a partial new trial, and independent of said 13 years pending nonstop civil action 2/10/86-6/20/86 by way of the Independent Action for a partial new trial in trial court.

The monumental liberty and property interest was (a) plaintiff's 2 minor children, and (b) his "total" 1922-1973

substantial worldwide longtime-valuable private properties including 1965-1970 entertainment labor at stipulated $430 per week plus worldwide stereo phono records/tapes nonstop proceeds plus interest -- taken for public use without any compensation which was certainly not just compensation required by the Constitution.

The Relief From Judgment action's evidentiary hearing was not just due process-required; it was due process-equal protection-parental rights-just compensation-required because it was essential to due process plus the other entitlements.

2. Where the alleged prejudicial trial court replacement judge ordered the alleged crime victim to remove his necessary preponderence of trial evidence from the 13-years-old pending action's Record at the onset of said 3 years

"Relief From Judgment" action; the State DID violate similar Constitution rights by failing to allow said trial evidence back into the Record during an appeal of right and before affirmation of dismissal with prejudice of both the 3 and 13 years old actions on ground of Summary Disposition, No Genuine Issue Of Fact.

The State appellate courts refused to hear plaintiff's appeal of the 6/20/86 dismissal of the 2 actions on the 2 original records -- including the original '73 action's EVIDENCE.

The plaintiff sought an order directing trial court to deliver to the Court of Appeals the 1974 trial exhibits. And he did not fail to cite an authority in support of his request to preclude appellate review of the same. The issue did not become moot because summary disposition was not proper.

Summary disposition was not proper because plaintiff did not fail to state a claim upon which relief (an evidentiary hearing and partial new trial) may be granted. and because there was a genuine issue of material fact as to whether the 12 frauds upon the courts existed for procuring and longtime prolonging the 1974 dismissal judgment.

The evidence has never been seen by any judge anywhere except the deceased 1974 trial judge and his replacement judge #2 who ordered plaintiff to remove it from the original record in 1983. And the Respondents have withheld that evidence from all courts except the original county trial court -- preventing a due process second opinion -- in violation of the Constitution Amendments 1, 5, and 14.

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5/10/82 Trial Judge ordered trial court to accept no more pleadings from plaintiff unless directed by the Court of Appeals or a higher court 9a

5/11/82 Tr. Judge refused to hold a hearing to correct his '79 unsettled statement of facts based upon just a partial transcript 9a

11/23/82 No due process 0-judges panel denied application for leave for delayed appeal of right after plaintiff bootstrapped himself off welfare, piecemeal raised the $5,000, and piecemeal filed the 2/5/76-required full transcript 9a

1/26/83 Court of Appeals denied leave for rehearing of 11/23/82 "0-Judges" decision . . . 10a

4/20/83 Mich. Supreme Court denied leave to appeal Ct. of Appeals denial of leave for an 8-years-delayed appeal of right 10a

5/4/83 Upon March or April resignation of Trial Judge, Trial Judge Replacement #1 set aside the Trial Judge's 5/10/82 Order and scheduled an evidentiary hearing for 5/13/83 motion for partial new trial on grounds that 1974 dismissal was procured and prolonged by frauds upon the courts 10a

5/10/83 Tr. Ct. replacement judge #1 rescinded his 5/4/83 memo . . 11a

5/26/83 Tr. judge replacement #2 knew that the 5/3/83 motion and fee were not returned to plaintiff and threatened contempt of court if plaintiff filed another paper not regarding an appeal to higher courts. 11a

6/23/83 Mich. Supreme Ct. denied plaintiff's motion for reconsideration of its 4/20/83 denial 11a

6/29/83 Trial Judge replacement #2 ordered the removal of the original EVIDENCE from the original '73 record 12a

11/29/83 Mich. Ct. of Appeals ruled that plaintiff was required to file an independent action 12a

1/30/84 Mich. Supreme Ct. denied leave to appeal the 11/29/83 decision . 13a

2/15/84 Trial Judge replacement #2 refused to allow plaintiff's required independent action to be filed 13a

9/20/84 Another no due process "0-Judges" Mich. Ct. of Appeals denial of leave to appeal a trial court denial of due process 13a

10/31/84 Another no due process "0-Judges" Ct. of Appeals denial of motion for reconsideration of 9/20/84 decision 13a

2/4/86 "0 Judges" Ct. of Appeals denied superintending control, but a Judge Shepard would order tr. ct. to file plaintiff's independent action 14a

5/7/86 Trial judge replacement #2 opinion-consolidation of the '73 original and the '86 independent actions, and prohibition of filing of further court documents . . . 15a

6/20/86 Trial judge replacement #2 Judgment Order consolidating the '73 and '86 actions, dismissing plaintiff's claims with full prejudice, denying plaintiff's motion and objection to entry of the judgment order, and ordering him to not submit any further papers in trial court in these consolidated matters 15a

6/30/86 Mich. Supreme Ct. denied leave to appeal Ct. of Appeals' refusal to take superintending control . 16a

2/25/87 Mich. Ct. of Appeals denied plaintiff's motion to compel transfer of the '73 action's record to Ct. of Appeals and expedite 16a

4/28/87 Mich. Ct. of Appeals Chief Judge R.J. Danhof intervened and immediate consideration was denied . . . . . .

5/22/87 Disqualification of Mich. Ct. of Appeals Chief Judge was denied 17a

7/21/87 Mich. Ct. of Appeals denied motion for rehearing of 2/25/87 decision . . . . . .

11/18/87 Mich. Ct. of Appeals denied plaintiff's motion for peremptory reversal 17a

1/11/88 Mich Ct. of Appeals denied plaintiff's motion for miscellaneous relief . . . .

3/3/88 JUDGMENT SOUGHT TO BE REVIEWED of Mich. Ct. of Appeals affirming county trial court's denying due process and dismissing the '73 and '86 actions 17a

4/25/88 County probate court ordered defendant Richard's and defendant Carl Jr.'s Surety Bond cancelled, plaintiff's claim denied, and the defendant Carl Sr.'s estate closed 19a

5/6/88 Ct. of Appeals denied rehearing of 3/3/88 opinion-affirmation judgment of trial court 6/20/86 consolidation-dismissal 20a

2/2/89 Mich. Supreme Court denied plaintiff's application for leave to appeal Ct. of Appeals 3/3/88 and 5/6/88 decisions 20a

3/14/89 Chief Judge Danhof and the Mich. Ct. of Appeals advised that they would decide plaintiff's appeal of right of county probate court's 4/25/88 decision not to honor plaintiff's claim against the defendant Carl Sr. estate . .

3/29/89 Mich. Supreme Ct. denied reconsideration or rehearing of its 2/2/89 denial 20a

4/14/89 Mich. Supreme Ct. amended its 2/2/89 and 3/29/89 orders . . 20a

6/5/89 Danhof denied hear'g re estate 20a

QUOTES FROM COURTS WHOSE DECISIONS ARE SOUGHT TO BE REVIEWED

12/9/74 CIRCUIT COURT FOR THE COUNTY OF MUSKEGON (Hereinafter shown as "trial court" #73-7432-CK DONALD EDGAR JOHNSON, Plaintiff, v. CARL ALFRED JOHNSON, SR., et al, Defendants. The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for Judgment at the end of plaintiff's case, the Court being fully advised in the premises, and conclusions of law, IT IS ORDERED that defendants' motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his complaint for the reasons set out in the opinion of the Court rendered in open Court. Approved as to Form _____ Donald Edgar Johnson, Plaintiff 4984 Grand Haven Road, Muskegon, Michigan 49441 /s/ William F. McNally, of LANDMAN, HATHAWAY, LATIMER, CLINK & ROBB, Attorneys for Defendants . . ./s/ tr. judge J.H. Piercey

9/5/75 Tr. Ct. Johnson v Johnson et al #73-C7432 Appellant's Timely Exparte Motion For Speedy Decisions . . . filed

9/5/75 Ct. of Appeals, Johnson v Johnson et al #22496: (Docket Sheet shows no entry though original and copies of "Appellant's Timely Exparte Motion For Speedy Decisions" was properly filed)

2/5/76 Ct. of Appeals, Johnson v Johnson, et al #22496 L. Ct. #73 C-7432: In this cause this Court having issued an order on September 24, 1975 denying the defendants-appellees' motion to dismiss and the defendants-appellees having filed a motion for reconsideration of this Court's order denying the motion to dismiss, and various motions for leave to use proposed capsule statement of proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for reconsideration be, and the same is hereby GRANTED, IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the trial court, IT IS FURTHER ORDERED that the various motions for leave to use various proposed capsule statements of proceedings filed by the plaintiff-appellant be, and the same are hereby DENIED.

1/18/79 (Unqualified) Chief Judge Robert J. Danhof presided Ct. of Appeals #22496: In this cause, a second application for rehearing of the (8/10/79 denial of disqualification of defendants-appellees' law firm) . . . DENIED for lack of merit in the grounds presented.

1/22/79 Tr. Ct. #73-C7432: Plaintiff's Motion for Immediate Disqualification of Defendants' Counsel having come on to be heard, and the Court having heard arguments of Plaintiff and counsel, IT IS ORDERED that said Motion be denied. /s/ trial judge John H. Piercey.

1/26/82 Tr. Ct. #73-C7432: The Court having reviewed the pleadings and heard oral argument, IT IS ORDERED that the emergency motion in pro per by plaintiff-appellant for immediate declaratory judgment that defendants' Landman law firm's 3/8/65 invalidation of over $25,471 Federal tax liens was and continues to be a fraud/false pretense on the U.S. Taxpayers, the I.R.S., the Courts, and all parties, is hereby DENIED because this State court is without jurisdiction to declare whether said invalidation was or continues to be a tax fraud against the Federal government. /s/ tr. judge Piercey

2/11/82 Tr. Ct. #73-C7432: The Court having reviewed the pleadings and heard oral argument, IT IS ORDERED that the emergency motion in pro per by plaintiff-appellant for a new or partially-new trial, for amending findings filed 7/31/79, and for certification that plaintiff's appeal is non-frivolous are hereby DENIED because plaintiff failed to prove that he was ever on a joint venture with defendants and this Court's 1974 decisions were correct. /s/ tr. judge J.H. Piercey

3/31/82 Tr. Ct. #73-C7432: The Court having reviewed pleadings and heard oral argument, IT IS ORDERED that the emergency motion in pro per by plaintiff-appellant for entry of declaratory judgments a) that plaintiff-appellant never took full custody of one dime's worth of 3 defendants-appellees' cash or properties between 8/20/64 and 7/30/70, and b) that defendants-appellees and/or their law firms took plaintiff-appellant's phono records and music publishing assets under false pretenses since 8/20/64 are hereby DENIED because it is an improper motion

requiring further adjudication of the merits of this case which will not be done unless ordered by appellate court. /s/ tr. judge J.H. Piercey.

5/10/82 Tr. Ct. #73-C7432: TO: Circuit Court Records FROM: John H. Piercey, Circuit Judge: You are herewith instructed to accept no more pleadings in the case of - Donald Edgar Johnson v Carl Alfred Johnson, Sr., Richard Gordon Johnson, Carl Alfred Johnson, Jr., jointly and severally, Defendants: File No. 73-C-7432, unless directed by the Court of Appeals or a higher Court. /s/ John H. Piercey.

5/11/82 Tr. Ct. #73-C7432: The Court having reviewed the pleadings and heard oral argument, IT IS ORDERED that the emergency motion in pro per by plaintiff-appellant to begin settling concise statement of proceedings and facts is hereby DENIED because this Court will not modify or supplement its concise statement of 7/31/79 or hold further hearings to perfect appeal unless ordered to by a higher court. /s/ John H. Piercey

11/23/82 "U-Judges" Ct. of Appeals #59895 L.C. No. 73-7432 CK: In this cause the plaintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974, and an order denying relief in the circuit court dated February 11, 1982 , and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction in the Court of Appeals, GCR 1963, 806.2(5). Plaintiff-appellant's application seeks

delayed review of proceedings which terminated in a judgment adverse to him on December 9, 1974. His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts with this court, See order dated February 5, 1976. Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979. Because this application also is outside the 18-month rule of GCR 1963, 806.2(5), it is likewise DENIED for lack of jurisdiction.

1/26/83 Ct. of Appeals #59895: In this cause an application for rehearing is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application for rehearing be, and the same is is hereby DENIED.

4/20/83 Mich. Supreme Ct. #71091 COA: 59895, LC: 73-C-7432-CK: On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

5/4/83 Tr. Ct. #C-7432: Please see attached Emergency Motion (plaintiff's 5/3/83). This matter is scheduled for Friday, May 13, 1983 at 2:30 p.m. You will please make necessary arrangements to have a District Court Judge present to hear this motion, as well as pleas which

I am advised you have previously scheduled. I am aware of a previous Judge Piercey Order denying Plaintiff an opportunity to file any pleadings. I am setting aside this Order to allow Plaintiff his day in court. /s/ Ronald H. Pannucci (trial judge replacement #1).

5/10/83 Tr. Ct. #73-7432-CK: The court has reconsidered the May 4, 1983, memorandum. It is therefore ORDERED that the May 10, 1982 Order signed by Judge Piercey is re-instated. The clerk is instructed to return all pleadings and fees. /s/ Ronald H. Pannuci, Chief Circuit Judge (trial judge replacement #1).

5/26/83 Tr. Ct. #73 7432 CK: After reading of the Petition and review of the file, it is the Order of this Court that plaintiff . . . be prohibited from filing any additional or further pleadings in this matter to prevent the efficient administation of justice, and all such further filings shall not in the regular due procedure of filing for an Appeasl from previous Orders and Judgments entered in this case be followed. Any violation of this Order shall subject the Plaintiff-Appellant to cont empt of this Court. This Order shall become effective immediately upon entry with the Clerk. . . /s/ Michael E. Kobza, Circuit Judge. (trial judge replacement #2).

6/23/83 Mich. Supreme Ct. #71091, COA 59895, LC: 73-C-7432-CK: On order of the Court, plaintiff-appellant's application for rehearing is treated as a motion for reconsideration of this Court's order of April 20, 1983 because GCR 1963, 864.4 provides for the filing of such applications only in opinion cases. The

motion for reconsideration is DENIED, because it does not appear to the Court that the order of April 20, 1983 was entered erroneously.

6/29/83 Tr. Ct. #73-7432-CK: This Court is advised certain exhibits are currently on file with the Muskegon County Clerk's office, Court Records Dept., in the above determined matter, and that it is the opinion of the Court said cause was appealed and the Michigan Supreme Court has denied leave to appeal further, the time for filing any motion for reconsideration long since passed; IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the Plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983, 12:00 o'clock noon; and he is to sign a prepared receipt therefor, or this Court will order them removed and/or destroyed in accordance with the General Court Rule so providing. This Order is to take effect immediately. /s/ Michael E. Kobza (trial judge replacement #2).

11/29/83 Mich. Ct. of Appeals #50565, L.C. #73 C-7432 CK, JOHN H. SHEPHERD, Presiding Judge . . . In this cause plaintiff-appellant has filed an application for rehearing of this Court's order of September 23, 1983, granting the motion for immediate consideration and denying the application for leave to appeal, and no answer to the application for rehearing having been filed, and due consideration of the foregoing having been had by the Court, IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for the reason that more than one year having elapsed from the date of judgment, plaintiff is required

to file an independent action, GCR 1963, 528.3.

1/30/84 Mich. Supreme Ct. #73254, COA: 50565, LC: 73-C-7432-CK: On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

2/15/84 Trial judge replacement #2 wrote, "Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson). 2-15-84 M. Kobza."

9/20/84 "O-Judges" Mich. Ct. of Appeals #78170, LC No. 73C7432 CK (defendants not shown "jointly and severally"): In this cause an application for leave to appeal is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented.

10/31/84 "O-Judges" Mich. Ct. of Appeals #78170, L.C. No. 073C7432 CK (defendants not shown "jointly and severally"): In this cause, an application for rehearing of this Court's order of September 20, 1984, denying an application for leave to appeal having been filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the grounds presented. IT IS FURTHER ORDERED that the Clerk is directed to refuse to

accept for filing any further pleadings in this matter from plaintiff-appellant, including a filing of an application for rehearing of this order. GCR 1963, 816.5.

2/4/86 "O-Judges" Mich. Ct. of Appeals "No. 88008 DONALD EDGAR JOHNSON, Plaintiff, -v- MUSKEGON CIRCUIT JUDGE, CARL ALFRED JOHNSON, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., LANDMAN LATIMER CLINK & ROBB, Law Firm Partnership, and WILLIAM F. MCNALLY, Defendants": In this cause a complaint for superintending control and motion for immediate consideration are filed by plaintiff, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for immediate consideration, be and the same is hereby GRANTED. IT IS FURTHER ORDERED that the complaint for superintending control be, and the same is hereby DENIED for lack of merit in the grounds presented.

Judge Shepherd would order pursuant to MCR 7.206(B)(3) that the Muskegon County Circuit Court shall allow plaintiff to file an independent action based upon alleged fraud upon the Court, MCR 2.612(C)(3), provided that the requisite fees and costs are either paid, waived or suspended. By allowing plaintiff to file an independent action below, this Court expresses no opinion on the form and content of the pleadings which may be filed, merits of plaintiff's action or any defenses which may be raised.

5/7/86 Tr. Ct., Johnson v Johnson et al #86-21207 plus #73-C7432: . . This Court is by this document ordering a consolidation of this file with the earlier filed case with which it properly belongs, that is, file no: 73-C-7432-CK. Furthermore, this Court orders that Plaintiff shall not submit any further documents or pleadings to be filed in this matter in this Circuit Court. . . This Court, therefore, reminds Plaintiff . . that it will, on its own motion, file a motion and order to show cause why he should not be held in contempt of this Court in the event he files any further pleadings in connection with either file no: 86-21207-CZ or 73-C-7432-CK. . . This litigation has been terminated for at least 12 years . . This case is at an end. /s/ Michael E. Kobza P16100, Chief Circuit Judge.

6/20/86 Tr. Ct., Johnson v Johnson et al File No. 86-21207-CZ: Defendants having filed their motion for disposition of all of plaintiff's claims for failure to state any claim upon which relief can be granted pursuant to MCR 2.116(C)(8), and the Court having fully considered plaintiff's arguments in reply, and oral arguments having been heard in open court on April 21, 1986, and The Court having initiated its own dispositive motion and order on or about May 7, 1986, IT IS ORDERED that Muskegon County Circuit Court Action 73-C-7432-CK be consolidated with the instant case 86-21207-CZ, and IT IS FURTHER ORDERED . . . that plaintiff's claims be dismissed with full prejudice, but without costs, and plaintiff's emergency motion and objection to the entry of this judgment order are denied, and IT IS FURTHER ORDERED that plaintiff not submit

any further documents or pleadings to be filed in Muskegon Circuit Court in these consolidated matters. /s/ HON. MICHAEL E. KOBZA, Circuit Judge

6/30/86 Mich. Supreme Ct., DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. MICHAEL E. KOBZA; CARL ALFRED JOHNSON; RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; LANDMAN, LATIMER, CLINK & ROBB; and WILLIAM F. McNALLY, et al, Defendants-Appellees, SC: 78441, CoA: 88008, 73-7432-CK: On order of the Court, the delayed application in propria persona for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

2/25/87 Mich. Ct. of Appeals, DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR. and The Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees. No. 92822, L.C. No. 86-21207 CZ: In this cause, plaintiff-appellant, has filed a motion to compel the transmission of the lower court record in Muskegon County Circuit Court No. 73-C 7432 to this Court, and a motion to expedite and no answer thereto having been filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the motion be and the same is hereby DENIED at this time. The denial of the motion shall not bar this Court from requesting the transmittal of the record if the Court later determines that it needs the record in Muskegon County Circuit Court No. 73-C 7432; IT IS FURTHER ORDERED that the motion to expedite be and the same is hereby DENIED.

5/22/87 Mich. Ct. of Appeals, Johnson v. Johnson et al #92822: In this cause plaintiff-appellant has filed a motion to disqualify Chief Judge Danhof, and no answer in opposition thereto being filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the motion be, and the same is hereby DENIED.

11/18/87 Mich. Ct. of Appeals, Johnson v. Johnson et al #92822, L.C. # 86-21207 CZ: In this cause plaintiff-appellant having filed a motion for peremptory reversal pursuant to MCR 7.211(C)(4), and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for peremptory reversal be, and the same is hereby DENIED . . .

3/3/88 Mich. Ct. of Appeals, DONALD EDGAR JOHNSON, Plaintiff-Appellant, v RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, and THE ESTATE OF CARL A. JOHNSON, SR., Defendants-Appellees, #92822: BEFORE: G.R. McDonald , P.J., M.M. Doctoroff and R. Robinson (former circuit judge, sitting on the Court of Appeals by assignment), JJ. PER CURIAM: Plaintiff appeals as of right from a June 20, 1986 order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and dismissing plaintiff's complaint. Initially we note that although defendants brought their motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief may be granted, a review of the trial judge's decision reveals that he looked beyond the pleadings in deciding defendants' motion. Therefore, we will construe the order granting summary disposition as one granted pursuant to

MCR 2.116(C)(10), no genuine issue of material fact, Huff v Ford Motor Co, 127 Mich App 287, 338 NW2d 387 (1983).

A motion for summary disposition premised upon MCR 2.116(C)(10), no genuine issue as to any material fact, requires the trial court to review the entire record to determine whether the nonmoving party has discovered facts to support the claim or defense. In reviewing the evidentiary record, the trial court must give the benefit of any reasonable doubt to the nonmoving party. Before judgment may be granted, the court must be satisfied that it is impossible for the claim asserted to be supported by the evidence at trial. Huff, supra.

A review of the record in the instant case convinces us that the trial court properly granted defendants motion for summary disposition. Plaintiff's alleged "independent action" alleging fraud on the court was nothing more than a laundry list of findings of fact made at the conclusion of a 1974 trial on plaintiff's original complaint against defendants. These findings were made at the conclusion of the 1974 trial and at the conclusion of the numerous subsequent post-judgment motion hearings. The trial court has had several opportunities to review plaintiff's claims in one form or another over the 14 years this plaintiff has kept the instant actions alive. Every decision made by the trial court has been appealed to this Court. Every decision of this Court has been appealed to our Supreme Court. Some of these decisions were appealed to the U.S. Supreme Court. We believe the trial judge correctly determined that this claim "has been litigated to death." Summary disposition was proper.

Plaintiff also seeks an order directing the lower court to deliver to this Court the 1974 trial exhibits. However, plaintiff's failure to cite any authority in support of his request precludes appellate review of the same. Tringali v Lal, 164 Mich App 299; 416 NW2d 417 (1987). Moreover, because summary disposition was proper, this issue has become moot.

Affirmed.

4/25/88 Muskegon Probate Ct., Re Estate of Carl A. Johnson, Sr., Deceased, #86-59607: ORDER ALLOWING SECOND ANNUAL AND THIRD AND FINAL ACCOUNTS OF PERSONAL REPRESENTATIVE, DISMISSING CLAIM, ALLOWING FEES OF FIDUCIARY AND OF ATTORNEYS, PAYMENT OF PARTIAL DISTRIBUTION, DISCHARGING SURETY BOND, ASSIGNING RESIDUE AND CLOSING OF ESTATE . . . It further appearing to the Court that partial distribution of the total sum of $300,000 was previously made to the residuary legatees (except for the distributive share of $30,000 to Donald E. Johnson). . It further appearing to the Court that the claim filed against said estate by Donald E. Johnson, has been disposed of by Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988 . . . IT IS ORDERED that the claim filed against said estate by Donald E. Johnson, in the total sum of $1,500,000, is hereby dismissed with prejudice pursuant to Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988 . . . IT IS ORDERED that the sum of $30,000 be paid to Donald E. Johnson, representing his distributive share of the partial distribution of $300,000 . . . IT IS ORDERED that the Surety Bond of Carl A. Johnson, Jr., Richard G. Johnson, Calvin B. Johnson, Randy Johnson,

and Darlyn Montoya, as Principals and Carl A. Johnson, Jr. and Richard G. Johnson as Sureties, to the Honorable Tom H. Linck, Probate Judge, as Obligee, be cancelled. and said estate be closed.

5/6/88 Ct. of Appeal, Johnson v Johnson et al #92822 L.C. # _____:
This Court orders that the motion for rehearing is denied.

2/2/89 Mich. Supreme Ct., Donald Edgar Johnson, Plaintiff-Appellant, v RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellees, SC: 83419, COA: 92822 LC: 86-59607-SE: On order of the Court, the delayed application for leave to appeal is considered and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

3/29/89 Mich. Supreme Ct. as above:
On order of the Court, the motion for reconsideration of this Court's order of February 2, 1989 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

4/14/89 Mich. Supreme Ct. as above:
On order of the Court, the orders of February 2, 1989 and March 29, 1989 are hereby amended to correct a clerical error by correcting the notation of the lower court docket number to read as follows:
"LC: 86-021207-CZ"

6/5/89 Mich. Ct. of Appeals, Re Estate of Carl A. Johnson, Sr. #108452, Robert J. Danhof, C.J. . . . The Court orders that the motion to remand is DENIED for failure to persuade the Court of the necessity of a remand at this time.

WHEN AND HOW QUESTIONS WERE RAISED
AND ADJUDICATED

On 5/20/83 in trial court, Petitioner filed an Emergency Request that the Order denying an evidentiary hearing be rescinded:

> "Said Order . . . condones 3 men and their agents' taking substantial government property plus a man's total worldwide substantial properties, child custodys, and basic Constitutional rights -- under false pretenses! This is a mockery of Justice and The Constitution and grounds for appeal to the Supreme Court of the United States if necessary!"

And Petitioner was ordered to stop fiing any more papers not in due procedure of filing for an appeal. And the appellate courts 1/30/84 ordered that an independent action, not a motion, must be filed.

On 2/23/84, Petitioner wrote Michigan Supreme Court 73254:

> "By its denying access 2/6-2/21/84 of plaintiff's independent action, these two (trial court) judges failed to uphold Constitution Amendments 1, 5, and 14."

And review was declined.

On 8/29/85 and after Michigan appellate courts declined to review trial court's denial of an evidentiary hearing, dismissing the motion, removing the evidence, and refusing to file the required independent action, Petitioner, who had petitioned this Court in 1976, 1978, and 1982 for interlocutory decisions, wrote to U.S. Supreme Court #85-357:

> "1. DEFENDANTS-APPELLEES' COUNSEL WAS A 'FEDERAL TAX EVADING CONFLICTING INTERESTS' COUNSEL,
>
> 2. WHEN BONA FIDE INDIGENT PLAINTIFF-APPELLANT ACTED WITHIN A REASONABLE TIME IN FILING SWORN ALLEGATIONS. . . THAT DEFENDANTS-APPELLEES AND THEIR FEDERAL TAX EVADING CONFLICTING DEBTOR-CREDITOR INTERESTS COUNSEL PROCURED AND 9½ YEARS PROLONGED THE TRIAL COURT DISMISSAL BY FRAUDS UPON THE COURTS AND APPELLATE COURTS MANDATED THAT PLAINTIFF FILE AN INDEPENDENT ACTION, TRIAL COURT SHOULD ACCEPT FEE AND BELATEDLY FILE, RETROACTIVE TO ATTEMPTED FILING DATE, PLAINTIFF-APPELLANT'S TIMELY GRIEVANCE/ REQUIRED GCR 528.3 INDEPENDENT ACTION,
>
> 3. PLAINTIFF-APPELLANT DID TOLL A 2 YEARS STATUTE OF LIMITATIONS CONCERNING A CLAIM WHEN HE TIMELY ATTEMPTED TO PROPERLY FILE HIS REQUIRED INDEPENDENT ACTION, CERTIFIED MAILED COPIES TO EACH DEFENDANT, AND SOUGHT APPELLATE COURTS' MANDATING TRIAL COURT TO FILE THAT ACTION,

23a

4. IT IS NOT LEGAL FOR 3 RICH MEN, THEIR INFLUENTIAL CONFLICTING INTERESTS LAW FIRM, AND THEIR REALTOR TO TAKE A CITIZEN'S TOTAL MONEY AND PROPERTIES, 2 LIMITED POWER OF ATTORNEYS, 8 YEARS' WAGES, COURT COSTS, AND CONSTITUTIONAL RIGHT OF DUE PROCESS-EQUAL PROTECTION-PARENTAL RIGHTS-JUST COMPENSATION UNDER FALSE PRETENSES, BREACH OF CONTRACTS, FRAUDULENT CONVERSION, LIBEL & SLANDER, AND FRAUDS UPON THE COURTS -- WHILE USING HIM AND HIS ASSETS TO EXECUTE-COVERUP A $25,000-$50,000 FEDERAL TAX EVASION AND HIDDEN OWNERSHIP OF A LARGE NIGHTCLUB/BINGO PARLOR/FLEA MARKET, and

5. A 1964-1972 TOTALLY WIPED OUT-STILL FINANCIALLY EXHAUSTED 62 YEARS OLD-5 YEARS COLLEGE TRAINED-EX U.S. ARMY OFFICER PLAINTIFF-APPELLANT CANNOT BE DEPRIVED OF A TRIAL COURT HEARING OF HIS TIMELY MOTION OR A TRIAL COURT FILING OF HIS TIMELY APPELLATE COURTS-MANDATED INDEPENDENT ACTION FOR A NEW TRIAL ON GROUND OF OPPONENTS' SEVERAL SIGNIFICANT FRAUDS UPON THE STATE AND FEDERAL COURTS DURING THIS 12 YEARS NONSTOP CIVIL CASE WHERE HE, WITH AND WITHOUT AN ATTORNEY, WAS DENIED (1) A JURY, (2) A FAIR TRIAL, (3) WAIVER OR SUSPENSION OF APPEAL COSTS, (4) A HEARING TO SETTLE FACTS, (5) A TIMELY APPEAL OF RIGHT, (6) A DELAYED APPEAL OF RIGHT THOUGH HE BELATEDLY EARNED THE $5,000 AND FILED THE REQUIRED FULL TRANSCRIPT, (7) DISQUALIFICATION OF TRIAL JUDGE AND OPPOSING FEDERAL TAX EVADING-FOR-SECRET-CLIENTS CONFLICTING INTEREST COUNSEL, AND (8) ADDING HIS ASSISTANT ATTORNEY, A COURT STENOGRAPHER, AND HUGE INFLUENTIAL OPPOSING COUNSEL AS NECESSARY DEFENDANTS -- AND WHERE THE HIGHER COURTS NEVER ONCE TOOK DELIVERY OF THE FULL MEANINGFUL RECORD OF THE CASE FOR A MEANINGFUL

REVIEW -- AND WHERE A COURT OF APPEALS 3 JUDGES PANEL REFUSED TO EVEN ALLOW THEIR NAMES TO APPEAR ON THEIR ORDER OF DEPRIVATION -- AND WHERE THE STATE SUPREME COURT REFUSED JURISDICTION! . . .

And plaintiff raised a federal question by arguing that not even the U.S. Congress can make a law respecting the right of the people to petition the government for a redress of grievances. Const. Amend. 1. And the Michigan Court of Appeals' unknown judges refused to reverse trial court's refusal to file plaintiff's 'required' independent action."

On 2/10/86 and after higher courts' pressure, trial court allowed the filing of the required independent action. And Petitioner wrote:

> "This action should be allowed to proceed because it should help stop special interest groups' wrongfully procuring substantial public and private properties by procuring and longtime prolonging unconscionable court decisions that deny Constitutional rights by frauds upon the courts. . . This Court take special precautions to insure that the U.S. Constitution is upheld in this matter."

And at a 4/21/86 trial court hearing, Petitioner alleged that the trial judge replacement #2 should be disqualified because he displayed upholding the U.S.

Constitution second to other considera-

tions:

> PETITIONER: "The Constitution says that when someone puts out, he is to get just compensation. If he puts it out to the public, he is still supposed to be compensated justly. I entertained the public and what I put into it was taken away from me, many thousands and tens of thousands of dollars worth of effort and I never received just compensation. The case was brought before (trial) Judge Piercey and he went along with the powerful opposition. . . So Judge Piercey dismissed. Now, I brought before Judge Kobza, that's you, the situation whereby this dismissal in 1974 was procured by fraud upon the courts and prolonged for 11 years. . . There were parts of the case in the Court of Appeals, but the Court of Appeals never received the record, the full record. So they never had a chance to examine the full picture of what was going on, and so I was never given an appeal of right nor was I given a delayed appeal (of right). When you denied me a new trial on the grounds of fraud upon the courts, I was still pursuing a delayed appeal of right in the upper courts. I wasn't through yet. And the record to this date has never left the trial court for examination by any other court. . . The Michigan Supreme Court had not yet finished reviewing the matter at a time when you denied my motion. . . And then in '84, you denied my (filing my) independent action. . . This court abused its discretion . . . This court refused to file an independent action. It did not. It did not act on it. It refused to even allow it

> to be filed. So how could this court properly review if they didn't allow it to be filed? . . So because of the federal and state laws allowing frauds upon the courts to be aired before upholding the dismissal, this court must allow a hearing of my 12 frauds upon the courts filed in May of '83, and this Court must also uphold the United States Constitution which says just compensation for services rendered whether to private or public, and this court must also take into mind that I'm in pro per and that liberal construction should be awarded my complaint. . . I was filing a civil suit because nobody in the prosecutor's office would help me file a criminal suit. . . I did file my affidavit of indigency. I was a bona fide indigent and I was on welfare. I was picking up garbage and weeds from the grass at the county building, here, for years. There was no way to get a transcript before I did. And I told the proper authories timely and so I did what I was supposed to do."

And the trial court opined that the Michigan Court of Appeals 2/3/86 opined that trial court did <u>not</u> have to file "a new case" and, since he didn't <u>have</u> to, the trial judge replacement #2 was not going to. And he 4/21/86 dismissed just the 86-21207 CZ case, but not the 73-C7432 case, with full prejudice but without costs.

On 4/25/86, Petitioner filed an affidavit:

". . . for the purpose of preventing the entry of a Summary Judgment . . . that if sworn as a witness he can testify to the facts hereinafter set forth . . . that while plaintiff admits that his 1973 case was 1974 dismissed in trial court then denied a timely or delayed appeal of right during years of nonstop proceedings in state and federal courts, plaintiff contends that said dismissal and denials were procured by defendants' 12 frauds upon the Courts. And these 12 frauds are genuine issues of fact that must be resolved before any legal issue, such as Summary Judgment for failure to state any claim upon which relief can be granted pursuant to a nonexisting MCR 2.116(C)(8), can be decided. . . That he attaches hereto a certified copy of said 12 Frauds Upon The Court upon which he relies, to wit: Plaintiff's 5/20/83 document from this Court's #73 C 7432 Ck. . . That defendants' issue of whether plaintiff's indepedent action is authorized by a Court of Appeals Order is moot because no authorization was necessary by any court for plaintiff's filing of his complaint. . . that genuine issues of fact exist as to whether defendants' attorney William Newman was even qualified to represent defendants at the 4/21/86 Hearing that was supposed to first rule on his qualification before even considering dismissal . . . that genuine issues of fact exist as to whether defendants' "O'Toole" law firms are qualified to represent defendants where this Court never even allowed the matter to be heard before its hasty erroneous dismissal. . .

> 'Summary judgment should not be granted where there are factual questions that must be resolved before the legal issues can be decided.' Roostertail, Inc. v Page, 32 Mich App 94."

And the trial judge replacement #2 5/1/86 signed affirmation of said 4/21/86 dismissal of the 1986 independent action. And on 5/7/86 he Ordered:

> ". . . This Court . . . is by this document ordering a consolidation of this file with the earlier filed case with which it properly belongs, that is, file no: 73-C-7432-CK. Furthermore, this Court orders that Plaintiff shall not submit any further documents or pleadings to be filed in this matter in this Circuit Court. The latest document filed was an emergency motion and objection to entry of summary judgment, which is summarily denied on grounds it raises no new grounds, and is an attempt to circumvent the earlier decisions of the Appellate Courts of Michigan to finalize the litigation between these parties. . . This litigation has been terminated for at least 12 years, and this Court is not going to tolerate any further resurrection or attempts at same to be filed forthwith in this Court. This case is at an end."

Then, he allowed a 6/20/86 NON-EVIDENTIARY HEARING for Petitioner's motion for reconsideration of the 5/7/86 Dismissal.

He denied Petitioner's request for reconsideration of the 5/7/86 Dismissal. He denied Petitioners's request for disqualification of Respondents' counsel on ground that "You do not have a right to pick your opponents' counsel". Petitioner sought resolution of "One, whether defendants' counsel is even qualified to represent defendants; two, whether the alleged 12 frauds upon the Court even existed that could procure and prolong the 12/9/74 dismissal for 11 years."

> PETITIONER: "Plaintiff believes that a trial court's final judgment or order dismissing this 1986 action would be contrary to federal and state constitutions and laws cited herein. . . 'A grant of summary judgment is premature if made before discovery on a disputed issue is complete.' That is a 364 NW 2d 723, 1985 decision. . . This 1986 independent action is here and I'm entitled to an evidentiary hearing. . . this court is in error to consolidate the two cases at this time. . . They were never litigated before (trial) Judge Piercey. They were never litigated before any Court, including this Court, Judge Kobza. There has

never been an evidentiary hearing of any of my 12 frauds upon the Court, which I affidavited way back in May of 1983. . . I also object to this Court attempting to consolidate the '73 case with the '86 case and then dismissing the '86 case. That is not what you had said in an earlier decision. This is error. . . ordering plaintiff not file any more papers in this matter in this Court is a muzzle, and it's an obstruction of justice . . . there's too much at stake here. This plaintiff has spent thousands of hours and dollars just in litigating this matter since '73. He has a pile of papers that are just about that tall that have ruined his life between 1973 and today, 1986. I have spent every possible spare moment in fighting unqualified attorneys. And I tried to get rid of that law firm. And in the '73 action the law firm gets up and lies to the Court and commits perjury under oath and prevents disqualification . . . you can grant relief. All you have to do is grant my evidentiary hearing. . . any judge that would sign such a mockery is putting the Constitution second to whatever power and influence is coming from that big building, and I object most strongly and I plead that the judge refuse to sign the paper and go ahead and set an evidentiary hearing . . . this matter which is far from being resolved is a mockery of justice, and it's against the Constitution and due process. It's against just compensation, equal protection of laws and parental rights."

And trial court consolidated the 2 cases

and dismissed them with full prejudice!

And on 6/30/86, Michigan Supreme Court #78441 declined to overrule Michigan Court of Appeals #88008 2/4/86 and 3/18/86 "No Judge" refusals to take Superintending Control of the matter where Petitioner claimed that he was being deprived of Coustitutional entitlements and the defective (for want of names of 3 judges) decision hinted that at least a "Judge Shepherd" would allow the filing of a GCR 528.3/ MCR 2.612(C)(3) independent action based upon alleged frauds upon the courts providing requisite fees and costs were paid, waived or suspended.

On 9/30/86 and 1/6/87, Petitioner moved the Michigan Court of Appeals #92822 for an order directing trial court to deliver the full complete record of the '73 and '86 cases, including his preponderence of 1974 trial exhibits -- citing appropriate authority in support for each motion. And he listed U.S. Const.

Amend. 1, 5, and 14 as topmost authorities as he appealed the 6/20/86 trial court judgment. THE 2 QUESTIONS HEREIN WERE 3/24/88 FILED IN MICHIGAN COURT OF APPEALS 92822 BY WAY OF PETITIONER'S EMERGENCY MOTION FOR REHEARING OF THEIR 3/3/88 JUDGMENT WHICH IS SOUGHT FOR REVIEW HEREIN. The motion was denied. And the Michigan Supreme Court 2/2/89 declined an application for leave to appeal, 3/29/89 declined a motion for reconsideration, and 4/14/89 amended their orders. And Petitioner filed <u>evidentiary proofs</u> (detailed references to original evidence) by way of a 5/3/89 motion in related Court of Appeals 108452 for a declaratory judgment that the 1983-sworn 12 frauds upon the court <u>did</u> exist, and in the alternative, for an evidentiary hearing. That motion was denied so Petitioner 6/6/89 filed an emergency complaint in Michigan Supreme Court 86327 for superintending control of Michigan Court of Appeals in the matter.

PROOF OF 1975-78 BONA FIDE INDIGENCY
(The document that was 9/5/75 filed, but mysteriously didn't get on to docket sheet, at Court of Appeals, Grand Rapids, Mich. See 10/7/81 motion for new trial in Ct. of Appeals 22496, 45093, and 59895).

". . IN THE COURT OF APPEALS, Johnson v. Johnson et al #22496, Muskegon Circuit Ct. #73 C-7432, Supreme Ct. 56870 & CR 14-428, APPELLANT'S TIMELY EX PARTE MOTION FOR SPEEDY DECISIONS; Notice of Hearing; Proof of Service. . . Ripped-off resulted-indigent civil case Plaintiff-Appellant in pro per . . respectfully moves the Court of Appeals for speedy decisions in light of new proofs of furthe resulted near-pauper status: On 8/20/75, he was served complaint for divorce #75 C-10505 . . Mrs. Johnson asks no alimony and that 'The assets of the parties are individually owned by the parties, plaintiff has her own sole and separate estate and requests no part of defendant's property'. He will not contest. On September 3, 1975, he began receiving public assistance #K6133244A . . . And he began serving on County work Experience Projects and living at different address from Mrs. Johnson. Dated: September 4,1975. /s/ DONALD EDGAR JOHNSON . . ." (Defendants and trial court received copies).

THE STATE ATTORNEY GENERAL STAFF COULDN'T AFFORD TO ASSIST PROSECUTION

". . . I am precluded by limitations on time and staff resources from attempting to comply with individual requ ests for assistance such as yours. . ." /s/ FRANK J. KELLEY, Attorney General. 11/12/81.

PROOF OF SERVICE

A F F I D A V I T

State of Michigan }
County of Muskegon } SS

Donald Edgar Johnson, being first duly sworn, says that he is not a member of the Bar of this Court and that he this day served 3 copies of the foregoing Emergency Petition For Writ of Certiorari to

each of the 3 law firms -- plus 1 copy to each of the 3 Johnson respondents, Clerk of Michigan Supreme Court, Clerk of Michigan Court of Appeals, Clerk of Muskegon Circuit Court, Clerk of Muskegon Probate Court. All parties required to be served have been served. Such service was accomplished by mailing the copies first class postage prepaid to the following:

RICHARD GORDON JOHNSON, 6395 E. Division, Newago, MI 49337.

CARL ALFRED JOHNSON, JR., 17761 E. Bayberry Dr., Ferrysberg, MI 49409.

THE ESTATE OF CARL A. JOHNSON, SR., Trust Dept., FMB Lumberman's Bank, 1 Lumberman's Square, Muskegon, MI 49443.

LANDMAN LATIMER CLINK & ROBB, P.O. Box 29, Muskegon, MI 49443.

CULVER LAGUE & McNALLY, P.O. Box 386, Muskegon, MI 49443.

O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, P.O. Box 786, Muskegon, MI 49443.

Clerk, Supreme Court 83419 & 86327
P.O. Box 30052, Lansing, MI 48909.

Clerk, Court of Appeals 92822 & 108452
350 Ottawa, N.W., Grand Rapids, MI 49503.

Clerk, Muskegon Circuit Court 73-C7432 &
86-21207, County Bldg - 6th Floor,
990 Terrace, Muskegon, MI 49442.

Clerk, Muskegon Probate Court 86-59607,
County Bldg - 5th Floor,
990 Terrace, Muskegon, MI 49442.

Donald Edgar Johnson

Subscribed and sworn to before me on
June 23, 1989.

Suzanne K. Lubbers

Suzanne K. Lubbers, Notary Public
Newaygo County, Michigan
Acting in Muskegon County
My Commission Expires: December 29, 1990

APPEARANCE

The Clerk will enter my appearance in pro per with effective assistance of counsel, Attorney Gary L. Veurink, as Counsel of Record for DONALD EDGAR JOHNSON, who in this Court is Petitioner.

June 23, 1989.

Donald Edgar Johnson

FEE FOR DOCKETING

The Clerk will please accept the attached $200.00 U.S.A. Money Order as the fee to be charged by the Clerk for docketing the foregoing.

June 23, 1989.

Donald Edgar Johnson